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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/707,442

12/15/2003

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1441

7590  
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06/28/2007

EXAMINER

DINH, MINH.

ART UNIT	PAPER NUMBER
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2132

MAIL DATE	DELIVERY MODE
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06/28/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/707,442	Applicant(s) FIELDING ET AL.	
	Examiner Minh Dinh	Art Unit 2132	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-110 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-110 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                      | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species: (1a) a species of an apparatus and method for checking files from the file system as disclosed in figures 2-3; and (1b) a species of a network firewall for checking files in transit as disclosed in paragraph 10. The species are directed to related products and/or processes. The related inventions are distinct if the (i) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect; (ii) the inventions do not overlap in scope, i.e., are mutually exclusive; and (iii) the inventions as claimed are not obvious variants. See MPEP § 806.05(j). In the instant case, the inventions as claimed have different modes of operation and functions (i.e., one works with files from the local file system and the other works with files in transit). Furthermore, the inventions as claimed do not encompass overlapping subject matter and there is nothing of record to show them to be obvious variants.

Within each species 1a and 1b, the application also contains claims directed to the following patentably distinct species in each of the following types:

- Connection type: species 2a (a device connected via an electronic link to a remote central computer), 2b (a device connected via a peer to peer network), 2c (a device not connected to a network or a stand-alone computer), and 2d (a device connected to a wireless network) as recited in claims 7-10.
- File type: species 3a (audio), 3b (video), 3c (text), 3d (.ppt), 3e (.xls), 3f (.doc), 3g (AAC), 3h (MP3), 3i (MP4), 3j (AIFF), 3k (MPEG), 3l (.JPG), 3m (.GIF), and 3n (.TIFF) as disclosed in paragraph 0009.
- Device type: species 4a (a PDA), 4b (a cell phone), 4c (a digital camera), 4d (a digital storage), 4e (a computer system), 4f (a network appliance), 4g (a microchip technology), and 4h (a digital audio player) as disclosed in paragraph 0030 and recited in claims 26-29, 35-40 and 57.
- Action/event type: species 5a (network action/event) and 5b (local computer system action/event) as recited in claims 41-44.
- Option type: species 6a (purchase), 6b (delete), 6c (lease), 6d (take online class), 6e (request use) as recited in claims 45-46, 70-72.
- Option communication type: species 7a (through an alert) and 7b (through a web page) as recited in claims 61-62.

These species are distinct because they are directed to mutually exclusive features (e.g., peer-to-peer network and client-and-server

network, a networked computer and a stand-alone computer, a wired network and a wireless network; a computer as opposed to a PDA, a cell phone or a digital camera, etc.)

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species (1a or 1b) for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is also required under 35 U.S.C. 121 to elect a single disclosed species for each type listed above for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-6, 11-16, 30-32, 59, 78-80 and 91-93 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37

CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

2. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Minh Dinh whose telephone number is 571-272-3802. The examiner can normally be reached on Mon-Fri: 10:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gilberto Barron can be reached on 571-272-3799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MD/  
Minh Dinh  
Examiner  
Art Unit 2132

6/21/07

  
Benjamin G. Lander  
Examiner Art Unit 2132